

# SENTENCING COMMISSION MINUTES

<b>Committee</b>	<b>Utah Sentencing Commission</b>
<b>Date</b>	Wednesday, April 7, 2010
<b>Time</b>	8 a.m. – 3 p.m.
<b>Location</b>	Utah State Capitol, Capitol Board Room
<b>Members Present</b>	Patrick Anderson, Paul Boyden, David Brickey, Rep. Lorie Fowlke, Curt Garner, Senator Jon Greiner, Dan Maldonado, Benjamin McMurray, Judge Ric Oddone, Judge Gregory Orme, Mike Haddon for Tom Patterson, Kathy Reimherr, Chief Ed Rhoades, Sy Snarr, Doyle Talbot, Judge Stephen Van Dyke, Carlene Walker, Kirk Torgensen
<b>Members Excused</b>	Judge Kevin Allen, Marlene Gonzalez, Ron Gordon, Judge Paul Maughan, Senator Ben McAdams, Mark Moffat, Rep. Jennifer Seelig, Sheriff James Winder
<b>Staff &amp; Visitors</b>	Staff: Jo Lynn Kruse, Ben Peterson, Jacey Skinner Visitors: Cliff Butter, Judge Terry Christiansen, Randy Kester, Rob Latham
<b>Agenda Item</b>	<b>Welcome and Approval of Minutes</b>
<b>Notes</b>	<p>Carlene Walker called the meeting to order and welcomed everyone. Judge Oddone made a <b>motion</b> to approve the January minutes. Sy Snarr <b>seconded</b> the motion which <b>passed unanimously</b>.</p> <p>Presentations were made in recognition of outgoing members for their dedicated service and support. Judge Terry Christiansen served from 2001 – 2010 as the trial judge representative and Randy S. Kester as defense attorney representative from 2005 – 2010.</p>
<b>Agenda Item</b>	<b>Adult Guideline Overview</b>
<b>Notes</b>	<p>One of the main statutory duties of the Sentencing Commission is to provide uniformity in sentencing and release guidelines. Utah's sentencing and release guidelines were implemented in 1985. While the guidelines are voluntary, the Commission strongly recommends they be followed. The guidelines are descriptive as possible, versus prescriptive. Our placement matrix and release matrix are combined.</p> <p>All felony convictions and class A misdemeanor sex offenses are included on the guidelines and help assist AP&amp;P in making recommendations to the judge. The guidelines also assist the judge in sentencing and the Board of Pardons and Parole in release decisions. Reasons for departure from the guidelines should be justified. Sentencing enhancements are generally not considered by the guidelines.</p> <p>Jacey reviewed the guidelines matrix, criminal history assessment and other forms included in the guidelines.</p>
<b>Agenda Item</b>	<b>2010 Legislative Session Penalty Changes</b>
<b>Notes</b>	<p>Paul Boyden led discussion regarding legislation that specifically deals with sentencing issues and tracking new penalties.</p> <p><b>HB 462 – Criminal Homicide and Abortion Revisions</b> Narrows the definition of abortion to medical procedures carried out by a physician, or through a substance used under the direction of a physician, with the consent of the woman on whom the abortion is performed. Creates new 1<sup>st</sup> degree felony, new 2<sup>nd</sup> degree felony, New 3<sup>rd</sup> degree felony and a new class A misdemeanor. These changes stem from a case in the Uintah Basin where a woman had someone beat her up so she would lose her baby.</p> <p><b>HB 195 – Homicide Penalty Amendment</b> Clarifies that the lowest penalty for Aggravated Murder is 25 years to life, and makes all references consistent with the amendments made during the 2009 General Session.</p> <p><b>HB 38 – Scheduling of Controlled Substances</b> Creates the Controlled Substances Advisory Committee and establishes the Committee's membership. Establishes the role of the committee as an advisory body regarding placing substances in the statutory schedule of controlled substances, changing the schedule of a substance, or removing a substance</p>

from the schedule. Provides guidelines for determining if a substance should be scheduled and in which schedule to place a substance.

**HB 225 – Counterfeit Substance Amendments**

Amends the definition of “counterfeit controlled substance,” including adding a reasonable person standard. Amends the definition of “imitation controlled substance,” including providing that an imitation controlled substance resembles any legally or illegally manufactured controlled substance.

**HB 30 – Drug Law Amendments**

Adds carisoprodol, which has the brand name of Soma, as a Schedule IV drug.

**SB 140S 01 – Juvenile Detention Amendments**

Clarifies the original intent of the legislature regarding the detention of minors and the filing of criminal charges by information in direct file cases.

**HB 19 – Post Conviction Remedies Amendments**

Amends the Post-Conviction Remedies Act to state that relief due to ineffective counsel is the only ground for relief under the Act.

**HB 303 – Protections for Victims of Domestic Violence**

Clarifies procedures surrounding criminal protective orders. Defines the various types of protective orders within the criminal justice system. Provides time limits on protective orders and jail release agreements and orders. Provides for a sentencing protective order to be issued for the duration of a domestic violence defendant’s probation and provides that violation of the order is a class A misdemeanor.

**HB 62 – Penalties for Violent Crimes in the Presence of a Child**

Creates a new class B misdemeanor for the commission or the attempted commission of a non-domestic violent crime in the presence of a child.

**HB 133S 01 – Release of Court Documents and Child Interviews**

Adds the video and audio recordings of Children’s Justice Center interviews to the list of records classified as “protected” under GRAMA. Provides that a violation of the court order or distribution of the interview or other protected document without a court order is punishable by contempt during the course of the criminal case, or class B misdemeanor if the court no longer has jurisdiction over the defendant.

**HJR 6 – Strangulation and Domestic Violence Joint Resolution**

Encourages law enforcement officers and prosecutors to investigate, and prosecute, consistent with case law, all assaults in which the evidence shows that the defendant created a substantial likelihood of impediment to the victim’s normal breathing or circulation by putting pressure on the victim’s airway as felonies.

**HB 88 – Electronic Cigarette Restrictions**

Creates multiple new criminal offenses related to the possession and distribution of electronic cigarettes. (3 new class A misdemeanors and 3 new class B misdemeanors)

**HB 206 – Ban on Sale of Smoking Paraphernalia to Minors**

Creates a class C misdemeanor for the providing of tobacco paraphernalia to a person under the age of 19 and a class B misdemeanor for a second or subsequent offense.

**HB 125 – Kidnap and Sex Offender Registry Amendments**

This bill requires the department to separate kidnapping and sex offenses on the registry, removes certain acts of simple kidnapping from the list of offenses for the registry, and makes technical changes.

**HB 209 – Sex Offender Regulation Amendments**

Provides that in addition to the \$100 annual registration fee that sex and kidnap offenders are currently required to pay to the DOC, a local registering agency may assess a fee of not more than \$25.

**HB 138 – Hazing Penalties**

Provides that it is a class A misdemeanor to commit an act of hazing involving alcohol or drugs.

**HB 277 – Overdose Reporting Amendments**

Provides that the court can consider at sentencing for possession or consumption of alcohol or providing alcohol to a minor that a person younger than 21, in the same incident, sought help for a person who was physically endangered because of the consumption of alcohol as a mitigating factor.

**SB 10 – Criminal Offense Penalties Amendments**

Broadens 2<sup>nd</sup> degree aggravated assault, expands enhancement and shifts penalties for theft and property crimes.

**HB 68 – Habitual Wanton Destruction of Wildlife**

Makes a third violation of class B Wanton Destruction of Protected Wildlife a 3<sup>rd</sup> degree felony.

	<p><b>HB 250 – Criminal Penalties Amendments – Leaving the Scene of an Accident</b> Increases the penalty from a class A misdemeanor to a 3<sup>rd</sup> degree felony for a person who fails to stop at the scene of an accident involving death.</p> <p><b>SB 120 – Disarming a Peace Officer Amendment</b> Provides that taking, or attempting to take, a conductive energy device from a peace officer is a 3<sup>rd</sup> degree felony.</p>
<b>Agenda Item</b>	<b>2010 Sentencing Guidelines</b>
<b>Notes</b>	<p>Jacey asked the Commission to review the guidelines. Changes appear in italics and are underlined. Discussion centered on the sentencing numbers as they appear on the crime category chart on page 11 and if there needs to be a column added between A and B because of the new crime categories (Child Abuse Homicide and Child Endangerment that results in a death). There is not a lot of data to support the numbers and perhaps they should be updated. Paul Boyden suggested that the shading of those columns is important, whereas the numbers are not helpful at all.</p> <p>Curt Garner made the <b>motion</b> to form a subcommittee to study the options and make some recommendations. Paul Boyden <b>seconded</b> the motion which <b>passed unanimously</b>. Curt will serve as Chair on the committee and the following volunteered to participate: Mike Haddon, Paul Boyden, Patrick Anderson, David Brickey and Ben Peterson. The subcommittee may also discuss adding kidnapping to the sex offender matrix, (Form 3, page 14).</p> <p>Curt Garner made the <b>motion</b> to categorize Habitual wanton destruction of wildlife, which creates a 3<sup>rd</sup> degree felony, as “other”, and to add Animal Cruelty which created a 3<sup>rd</sup> degree felony to the guideline and categorize as “other”. Benjamin McMurray <b>seconded</b> the motion which <b>passed unanimously</b>.</p>
<b>Agenda Item</b>	<b>Review of Juvenile Sentencing Guidelines</b>
<b>Notes</b>	The Juvenile Guidelines are used regularly, but have not been reviewed for many years. Judge Oddone made the <b>motion</b> that the Juvenile Subcommittee review the Juvenile Sentencing Guidelines yearly. Judge Van Dyke <b>seconded</b> the motion, which <b>passed unanimously</b> .
<b>Agenda Item</b>	<b>2009 Sentencing and Length of Stay Statistics</b>
<b>Notes</b>	<p>Cliff Butter presented statistics on the following:  Felony sentencing to prison and probation  Growth in the overall population  Who is coming and going into prison, by offense type and degree level  Length of Stay  Recidivism</p> <p>Utah has the lowest incarceration rate out of the Western states and is the seventh lowest nationally. While our Crime Index is steady, our incarceration rates have increased. This is partly due to legislation and the ratcheting up of offense penalties.</p>
<b>Agenda Item</b>	<b>Jail as a Condition of Probation Guidelines</b>
<b>Notes</b>	Jacey reviewed a draft of the instructions for Form 5 – Jail as a Condition of Probation and when approved will become part of the sentencing guidelines booklet. The document has a matrix on the opposite side, which will coincide with our general matrix and is intended to be used for someone who is not given a prison sentence. This matrix defines the conditions of their probation. Jacey anticipates that this matrix will be used by AP&P in making their recommendation to the court. Curt Garner made the <b>motion</b> to adopt this document for inclusion to the Sentencing Guidelines booklet. Sy Snarr <b>seconded</b> the motion which <b>passed unanimously</b> .
<b>Agenda Item</b>	<b>DUI Matrix</b>
<b>Notes</b>	Mary Lou Emerson from CCJJ presented the Utah DUI Sentencing Matrix which is frequently used by Justice Court Judges. David Brickey made the <b>motion</b> to adopt the DUI Matrix and post it on our website. Chief Ed Rhoades <b>seconded</b> the motion which <b>passed unanimously</b> .
<b>Agenda Item</b>	<b>Study Items for Upcoming Year</b>
<b>Notes</b>	<b>Sentencing Commission Sunset Date</b> – Scheduled in May to present to the Law Enforcement Judiciary Committee.

	<p><b>Comprehensive Review of Penalties – Master Study Item</b> – Anomalies Committee. Persons interested in anomalies committee: Mark Moffat, Mark Nash, Paul Boyden, Rep. David Litvack</p> <p><b>Probation Issues</b> – Make more effective, provide incentives, begin with a presentation soon and follow up. Look at model program from Pennsylvania</p> <p><b>Criminal Protective Orders</b> – Extend through transfer of jurisdiction to Board</p> <p><b>CCJJ Sentencing and Incarceration Study</b> – Will provide updates</p> <p><b>Evidence Based Practices Study</b> – Dr. Taxman's visit – Joint committee w/courts will be here next meeting and give a presentation</p> <p><b>Age of Consent Issues</b> – In Juvenile Court and District Court – Legislation to reduce age differences, sponsored by Rep. Becky Edwards. Sentencing Commission will review the bill in June.</p> <p><b>4<sup>th</sup> District Probation Reform Project</b> – Have them come and present?</p> <p><b>Illegal Immigration and Sentencing Issues</b></p> <p><b>Juvenile Guidelines</b></p> <p><b>Annual Collection of Data</b> – Make a list of data we track every year, and do consistently, to recognize trends. Include courts, corrections, juvenile justice system and the Board. If there is data you would like to see or have tracked please notify Jacey.</p>
<b>Next Meeting</b>	The next meeting will be on June 2, 2010, Utah State Capitol Complex, Senate Bldg., Spruce Room

Minutes prepared by Jo Lynn Kruse – Administrative Assistant, CCJJ